

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KAREN HANDLIN, BRIAN HANDLIN, and
MAXINE FORTUNE,

Plaintiffs,

v.

MURPHEY PIERSON, MICHELLE MERCERI,
KATHERINE MERCERI, ALTERNATIVE
INVESTORS, INC., FOCUS MORTGAGE, LLC,
AZ-WA INVESTORS (a partnership),

Defendants.

NO. 2:08-cv-01861-JCC

DEFENDANT MICHELLE
MERCERI'S ANSWER TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT

COMES NOW Defendant Michelle Merceri, by and through her counsel of record, The Otto Law Group, PLLC, and answers the First Amended Complaint of Plaintiffs Karen Handlin, Brian Handlin and Maxine fortune, as follows:

ANSWER - 1

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INTRODUCTORY STATEMENT

1. Defendant lacks sufficient information and knowledge to form a reasonable belief as to the truth of the allegations contained in this Paragraph 1 and, therefore, denies same.

2. Defendant admits only to being contacted by Plaintiffs'. As to other factual allegations contained in this paragraph 2, Defendant lacks sufficient information and knowledge to form a reasonable belief as to the truth and, therefore, denies same.

3. Defendant denies the allegations set out in this Paragraph 3.

4. Paragraph 4 of the Complaint states a legal conclusion to which no answer is required. In so far as this Paragraph 4 alleges facts, Defendant lacks sufficient information and knowledge to form a reasonable belief as to the truth of the allegations and, therefore, denies same.

5. Defendant admits that the terms of RCW 61.34.020 (5) and RCW 61.34.010 are as stated in RCW 61.34.020 (5) and RCW 61.34.010. As to other factual allegations contained in this Paragraph 5, Defendant lacks sufficient knowledge and information to form a reasonable belief as to the truth and, therefore, denies same.

6. Defendant denies the allegations set out in this Paragraph 6.

1 7. Defendant lacks sufficient information and knowledge to form a reasonable
2 belief as to the truth of the allegations contained in this Paragraph 7 and, therefore, denies
3 same.

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5 **BACKGROUND ALLEGATIONS**

6 8. Defendant lacks sufficient information and knowledge to form a reasonable
7 belief as to the truth of the allegations contained in this Paragraph 8 and, therefore, denies
8 same.

9 9. Defendant lacks sufficient information and knowledge to form a reasonable
10 belief as to the truth of the allegations contained in this Paragraph 9 and, therefore, denies
11 same.

12 10. Admit.

13 11. Admit.

14 12. Defendant lacks sufficient information and knowledge to form a reasonable
15 belief as to the truth of the allegations contained in this Paragraph 10 and, therefore, denies
16 same.

17 13. Defendant lacks sufficient information and knowledge to form a reasonable
18 belief as to the truth of the allegations contained in this Paragraph 13 and, therefore, denies
19 same.

20 14. Defendant lacks sufficient information and knowledge to form a reasonable
21 belief as to the truth of the allegations contained in this Paragraph 14 and, therefore, denies
22 same.

23 ANSWER - 3
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1 15. Defendant lacks sufficient information and knowledge to form a reasonable
2 belief as to the truth of the allegations contained in this Paragraph 15 and, therefore, denies
3 same.

4 16. Defendant admits only to being contacted by Plaintiffs. As to other factual
5 allegations contained in Paragraph 16, Defendant lacks sufficient information and knowledge
6 to form a reasonable belief as to the truth and, therefore, denies same.

7 17. Defendant lacks sufficient information and knowledge to form a reasonable
8 belief as to the truth of the allegations contained in this Paragraph 17 and, therefore, denies
9 same.

10 18. Defendant denies the allegations set out in this Paragraph 18.

11 19. Paragraph 19 of the Complaint states a legal conclusion to which no answer is
12 required. To the extent Paragraph 19 contains factual allegations Defendant lacks sufficient
13 information and knowledge to form a reasonable belief as to the truth and, therefore, denies
14 same.

15 20. Defendant admits only speaking with Plaintiffs with regard to a solution for
16 their home. Defendant denies that the solution was a “distressed home conveyance” as has
17 been previously alleged.

18 21. Defendant admits only working with Katherine Merceri and Murphy Pierson.
19 Defendant denies remaining allegations contained in this Paragraph 21.

20 22. Defendant admits only that certain documents were prepared and executed
21 between the parties. Those documents are the best evidence of their contents. Defendant is
22 without sufficient information and knowledge to form a reasonable belief as to the truth of the
23 remaining allegations contained in this Paragraph 22 (a) – (c) and, therefore, denies same.

24 ANSWER - 4

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1 23. Defendant lacks sufficient information and knowledge to form a reasonable
2 belief as to the truth of the allegations contained in this Paragraph 23 and, therefore, denies
3 same.

4 24. Defendant lacks sufficient information and knowledge to form a reasonable
5 belief as to the truth of the allegations contained in this Paragraph 24 and, therefore, denies
6 same.

7 25. Defendant lacks sufficient information and knowledge to form a reasonable
8 belief as to the truth of the allegations contained in this Paragraph 25 and, therefore, denies
9 same.

10 26. Defendant denies that Plaintiffs were insufficiently informed regarding the
11 terms of the transaction. As to remaining factual allegations, Defendant is without sufficient
12 information and knowledge to form a reasonable belief as to the truth of the remaining
13 allegations contained in this Paragraph 26 and, therefore, denies same.

14 27. Defendant lacks sufficient information and knowledge to form a reasonable
15 belief as to the truth of the allegations contained in this Paragraph 27 and, therefore, denies
16 same.

17 28. Defendant denies the interest rate on the transaction was 49.46%. Defendant is
18 without sufficient information and knowledge to form a reasonable belief as to the truth of the
19 remaining allegations contained in this Paragraph 28 and, therefore, denies same.

20 29. Defendant denies that Plaintiffs never received any paperwork evidencing a
21 complete and accurate breakdown of the funds. As to remaining factual allegations in
22 Paragraph 29, Defendant lacks sufficient information and knowledge to form a reasonable
23 belief as to the truth and, therefore, denies same.

24 ANSWER - 5

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1 30. Defendant denies the allegations contained in this Paragraph 30 of the
2 complaint.

3 31. Defendant lacks sufficient information and knowledge to form a reasonable
4 belief as to the truth of the allegations contained in this Paragraph 31 and, therefore, denies
5 same.

6 32. Defendant lacks sufficient information and knowledge to form a reasonable
7 belief as to the truth of the allegations contained in this Paragraph 32 and, therefore, denies
8 same.

9 33. Defendant lacks sufficient information and knowledge to form a reasonable
10 belief as to the truth of the allegations contained in this Paragraph 33 and, therefore, denies
11 same.

12 **PARTIES, JURISDICTION AND VENUE**

13 34. Admit.

14 35. Defendant admits only to being a natural person conducting business as an
15 individual in King County, Washington. Defendant is without sufficient information and
16 knowledge to form a reasonable belief as to the truth of the remaining allegations contained in
17 this Paragraph 35 and, therefore, denies same.
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19 36. Defendant lacks sufficient information and knowledge to form a reasonable
20 belief as to the truth of the allegations contained in this Paragraph 36 and, therefore, denies
21 same.

22 37. Defendant denies the allegations contained in this Paragraph 37.

23 ANSWER - 6
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1 38. Defendant denies the allegations contained in this Paragraph 38.

2 39. Defendant lacks sufficient information and knowledge to form a reasonable
3 belief as to the truth of the allegations contained in this Paragraph 39 and, therefore, denies
4 same.

5 40. Paragraph 40 of the complaint states a legal conclusion to which no response is
6 required. To the extent this Paragraph contains factual allegations requiring a response,
7 Defendant is without sufficient information and knowledge to form a reasonable belief as to the
8 truth and, therefore, denies same.

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10 **COUNT ONE: QUIET TITLE - EQUITABLE MORTGAGE**

11 41. Defendant admits only that Plaintiffs were paid funds as a result of the
12 transaction. Defendant is without sufficient information and knowledge to form a reasonable
13 belief as to the truth of the remaining allegations contained in this Paragraph 41 and, therefore,
14 denies same.

15 42. Defendant admits the terms of the “Residential Lease Option to Purchase
16 Agreement” are as stated in the “Residential Lease Option to Purchase Agreement.” Defendant
17 is without sufficient information and knowledge to form a reasonable belief as to the truth of
18 the remaining allegations contained in this Paragraph 42 and, therefore, denies same.

19 43. Defendant lacks sufficient information and knowledge to form a reasonable
20 belief as to the truth of the allegations contained in this Paragraph 43 and, therefore, denies
21 same.

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23 ANSWER - 7
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45. Defendant denies the allegations set out in this Paragraph 45(a) – d).

46. Defendant denies the allegations set out in this Paragraph 46.

47. Defendant denies the allegations set out in this Paragraph 47.

48. Defendant denies the allegations set out in this Paragraph 48.

49. Defendant lacks sufficient information and knowledge to

belief as to the truth of the allegations contained in this Paragraph 49 and, therefore, denies same.

COUNT TWO: UNCONSCIONABILITY

50. Defendant denies the allegations set out in this Paragraph 50.

51. Defendant denies the allegations set out in this Paragraph 51.

52. Defendant denies the allegations set out in this Paragraphs 52 (a) - (d).

53. Defendant denies the allegations set out in this Paragraph 53.

COUNT THREE: TRUTH-IN-LENDING ACT VIOLATION

54. Defendant lacks sufficient information and knowledge to form a reasonable belief as to the truth of the allegations contained in this Paragraph 54 and, therefore, denies same.

55. Defendant lacks sufficient information and knowledge to form a reasonable belief as to the truth of the allegations contained in this Paragraph 55 and, therefore, denies same.

56. Defendant lacks sufficient information and knowledge to form a reasonable belief as to the truth of the allegations contained in this Paragraph 56 and, therefore, denies same.

57. Defendant denies the allegations set out in Paragraph 57.

58. Defendant denies the allegations set out in Paragraph 58.

COUNT FOUR: USURY

59. Defendant lacks sufficient information and knowledge to form a reasonable belief as to the truth of the allegations contained in this Paragraph 59 and, therefore, denies same.

60. Defendant admits only that the terms of RCW 19.52.020 (1) are as stated in RCW 19.52.020 (1). Defendant is without sufficient information and knowledge to form a reasonable belief as to the truth of the remaining allegations contained in this Paragraph 60 and, therefore, denies same.

61. Defendant denies the allegations set out in Paragraph 61.

62. Defendant denies the allegations set out in Paragraph 62.

63. Defendant denies the allegations set out in Paragraph 63.

COUNT FIVE: RESPA VIOLATIONS

64. Defendant lacks sufficient information and knowledge to form a reasonable belief as to the truth of the allegations contained in this Paragraph 64 and, therefore, denies same.

65. Defendant lacks sufficient information and knowledge to form a reasonable belief as to the truth of the allegations contained in this Paragraph 65 and, therefore, denies same.

66. Paragraph 66 of the Complaint states a legal conclusion to which no answer is required. Insofar as Paragraph 66 alleges facts, Defendant lacks sufficient information and knowledge to form a reasonable belief as to the truth of the allegations and, therefore, denies same.

COUNT SIX: WASHINGTON MORTGAGE BROKER PRACTICES ACT VIOLATIONS

67. Defendant lacks sufficient information and knowledge to form a reasonable belief as to the truth of the allegations contained in this Paragraph 67 and, therefore, denies same.

68. Defendant lacks sufficient information and knowledge to form a reasonable belief as to the truth of the allegations contained in this Paragraph 68 and, therefore, denies same.

69. Defendant denies the allegations set out in this Paragraphs 69 (a) – (g).

ANSWER - 10

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COUNT SEVEN: BREACH OF FIDUCIARY DUTY

70. Defendant lacks sufficient information and knowledge to form a reasonable belief as to the truth of the allegations contained in this Paragraph 70 and, therefore, denies same.

71. Defendant admits only that the terms of RCW 19.146.095 and RCW 61.34.060 are as stated in RCW 19.146.095 and RCW 61.34.060. Defendant is without sufficient information and knowledge to form a reasonable belief as to the truth of the remaining allegations contained in this Paragraph 71 and, therefore, denies same.

72. Defendant denies the allegations set out in this Paragraphs 72 (a) – (e).

73. Defendant denies the allegations set out in this Paragraph 73.

COUNT EIGHT: WASHINGTON CREDIT SERVICES ORGANIZING ACT VIOLATIONS

74. Defendant lacks sufficient information and knowledge to form a reasonable belief as to the truth of the allegations contained in this Paragraph 74 and, therefore, denies same.

75. Defendant denies the allegations set out in this Paragraphs 75 (a) – (f).

76. Defendant denies the allegations set out in this Paragraph 76.

COUNT NINE: WASHINGTON CONSUMER PROTECTION ACT VIOLATIONS

77. Defendant denies the allegations set out in this Paragraph 77.

78. Defendant denies the allegation set out in this Paragraph 78 (a) – (h).

1 79. Defendant denies the allegation set out in this Paragraph 79.

2 80. Defendant denies the allegations set out in this Paragraph 80.

3 **COUNT TEN: ENTERPRISE CORRUPTION/RACKETEERING**

4 81. Defendant denies the allegations set out in this Paragraph 81.

5 82. Defendant denies any unlawful debt. Defendant is without sufficient
6 information and knowledge to form a reasonable belief as to the truth of the remaining
7 allegations contained in this Paragraph 82 and, therefore, denies same.

8 83. Defendant denies the allegations set out in this Paragraph 83.

9 84. Defendant denies the allegation set out in this Paragraph 84.

10 85. Defendant denies the allegations set out in this Paragraph 85.

11 86. Defendant denies the allegations set out in this Paragraph 86.

12 **COUNT ELEVEN: COMMON LAW FRAUD/MISREPRESENTATION**

13 87. Defendant lacks sufficient information and knowledge to form a reasonable
14 belief as to the truth of the allegations contained in this Paragraph 87 and, therefore, denies
15 same.

16 88. Defendant denies the allegations set out in this Paragraph 88.

17 89. Defendant lacks sufficient information and knowledge to form a reasonable
18 belief as to the truth of the allegations contained in this Paragraph 89 and, therefore, denies
19 same.

20 90. Defendant denies the allegations set out in Paragraph 90.

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ANSWER - 12

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1 91. Defendant denies the allegations set out in Paragraph 91.

2 **AFFIRMATIVE DEFENSES**

3 By way of further answer to Plaintiffs' Complaint, and without waiving any
4 allegations previously denied, Defendant asserts the following Affirmative Defenses:

- 5 1. Plaintiffs' fail to state a claim upon which relief can be granted.
- 6 2. Plaintiffs' claims are barred by the doctrine of unclean hands.
- 7 3. Plaintiffs' claims are barred by the doctrine of assumption of the risk.
- 8 4. Plaintiffs' claims are barred by the doctrine of contributory negligence.
- 9 5. Plaintiffs' claims are barred by statute of limitations.
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23 ANSWER - 13

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PRAYER FOR RELIEF

Wherefore, Defendant prays for relief as follows:

1. Dismissal of Plaintiffs' Complaint in its entirety with Prejudice;
2. An award of Defendant Michelle Merceri's costs and attorneys' fees incurred herein; and
3. For such other legal and equitable relief as this Court deems just and proper.

Dated this 16th day of January, 2009

Respectfully submitted,

THE OTTO LAW GROUP, PLLC

/s/ Eric J. Camm

Eric J. Camm, WSBA No. 36844

Attorney for Defendant Michelle Merceri

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ANSWER - 14

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